



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

October 8, 2009

Keith Elliott
California Regional Water Quality Control Board,
Santa Ana Region
3737 Main Street, Suite 500
Riverside, CA 92501

Re: Draft MS4 Permit for Riverside County and Incorporated Cities within
Riverside County (NPDES Permit No. CAS618033)

Dear Mr. Elliott:

The following are EPA Region 9's comments on the July 23, 2009 draft permit for discharges from the Municipal Separate Storm Sewer System (MS4) serving Riverside County and incorporated cities within Riverside County within the jurisdiction of the Santa Ana Regional Board (SARB) (NPDES Permit No. CAS618033).

Region 9 supports adoption of the draft permit, with a few relatively minor revisions and clarifications as described below.

A. Fact Sheet

Page 7 of 52 in the fact sheet overstates the Clean Water Act's exemptions for discharges from agricultural sources. This fact sheet should be revised to indicate the CWA specifically excludes discharges composed entirely of return flows from irrigated agriculture and nonpoint source agricultural activities.

B. Low Impact Development (LID) Requirements

As we have pointed out in previous letters to the SARB, Region 9 is seeking clear, measurable, and enforceable LID requirements in MS4 permits. We understand the intent of the SARB is to ensure that the LID requirements of the Riverside County MS4 permit are consistent with the requirements of the other MS4 permits issued by the SARB, such as the permit for Orange County adopted in May 2009, with Region 9's support. We also support consistent LID requirements for the MS4 permits issued by Board. However, a comparison of the proposed MS4 permit for Riverside County with the Orange County permit shows that a number of revisions (discussed below) are necessary in the Riverside County permit to ensure consistency.

Page 89 (Section XII.E.3) – We recommend that the current requirements of Section XII.E.3 of the proposed Riverside County permit be deleted and replaced with the requirements of Section XII.E.8. The requirements of Section XII.E.8 of the Riverside County permit are similar to the requirements of Section XII.C.2 of the Orange County permit. However, Section XII.E.3 of the Riverside County permit is unnecessarily duplicative of Section XII.E.8 and also omits Footnote 56 of the Orange County permit which specifies that bio-treatment is only allowed if infiltration, harvesting and reuse, or evapotranspiration are not feasible. The requirements of Footnote 56 of the Orange County permit are found in Footnote 48 of the draft Riverside County permit which is a footnote for Section XII.E.8.

It appears the citations in Section XII.E.8 of the Riverside County permit also need revision. The “design capture volume” in the Riverside County permit which would correspond to the “design capture volume” in the Orange County permit is found in Section XII.D.4.a.i of the Riverside County permit rather than Section XI.D.5.I.1. Further, there is no Section XI.E.8 in the Riverside County permit; from the context, it appears the Board has Section XII.C.7 of the Orange County permit in mind – this entire section would need to be added to the Riverside County permit to be consistent with the Orange County permit. If the requirements of the current Section XII.E.8 replaced the current Section XII.E.3, Section XII.C.7 of the Orange County permit could be moved into Section XII.E.8 of the Riverside County permit. We also note that the reference to Section XI.F in Section XII.E.8 should be to Section XII.F and that the numbering sequence of the permit conditions omits Section XII.E.9.

Finally, we would point out that the citations in Footnote 48 of the Riverside County permit need revision – Section XI.E.6 should be Section XII.E.1, and Section XI.E.6.a.vi should be Section XII.E.10.a.vi; we would further note that Section XII.E.10.a.vi and Section XII.F.2 are somewhat duplicative.

Page 88 (Section XII.E.2) – The reference to Section XI.E should be to Section XII.E.

Page 91 (Footnote 49) – The reference to Footnote 85 should be to Footnote 48.

C. Total Maximum Daily Loads (TMDLs)

Region 9 generally supports the draft permit’s incorporation of applicable wasteload allocations (WLAs) from approved TMDLs. The two TMDLs with applicable WLAs are the Middle Santa Ana River (MSAR) bacteria TMDL and the Lake Elsinore/Canyon Lake nutrient TMDLs. We are pleased to see the applicable WLAs incorporated into the draft permit in a manner consistent with the Orange County permit, as numeric effluent limits. As with the draft permit’s LID provisions, the inclusion of these numeric limits results in clear, measurable, and enforceable permit requirements.

We understand that Board staff have received arguments against the incorporation of WLAs as numeric effluent limits. We also understand that these arguments have cited the November 22, 2002 EPA guidance document entitled, “Establishing Total Maximum

Daily Loads (TMDLs) Wasteload Allocations for Storm Water Sources and NPDES Permit Requirements Based on those WLAs” in contending that municipal stormwater permits should not include numeric effluent limits. Please note that this EPA guidance states that when a non-numeric limit (i.e., a BMP-based limit) is imposed in a permit, “the permit’s administrative record, including the fact sheet when one is required, needs to support that the BMPs are expected to be sufficient to implement the WLA in the TMDL.” In general, Region 9 has found that permitting agencies typically do not have the necessary supporting documentation in the permit’s administrative record to demonstrate that specific BMPs are expected to be sufficient to implement WLAs. Specifically in this case, the Administrative Record for this draft permit does not provide technical documentation demonstrating that specific BMPs would achieve the WLAs. Thus, the draft permit’s use of numeric effluent limits is consistent with EPA’s guidance given that the record does not demonstrate that non-numeric BMP controls will be sufficient to implement the WLA.

Additionally, when considering the national stormwater program, it’s important to recognize that EPA’s November 22, 2002 guidance reasonably reflected program knowledge after approximately a decade of implementing the Clean Water Act’s stormwater provisions. The guidance envisioned that adjustments such as more stringent controls might be necessary in the future to protect water quality. It is nearly seven years later. In areas like the Santa Ana Region, where the fourth generation of Phase I municipal stormwater permits are being issued, both Board staff and EPA recognize that municipal stormwater discharges continue to be a significant cause of water quality impairments. Thus we support the Region in its efforts to include MS4 permit conditions that are increasingly proscriptive to ensure water quality is protected.

We also understand that critics of the draft permit have alleged that water quality-based effluent limits should not be included in this permit because they cannot be revised should applicable water quality standards for the receiving waters be revised. Board staff have informed us that it has been argued that EPA’s “anti-backsliding rules” would prevent a permit from being modified to reflect new water quality standards. Without making a judgment about whether or not a change to water quality standards would be approved by EPA, it’s important to recognize that water quality-based effluent limits contained in NPDES permits may be modified to reflect updated water quality standards. In fact, water quality-based effluent limits may be revised consistent with EPA’s anti-backsliding rules, whereas the alternative type of effluent limit, a technology-based effluent limit, would be more difficult to revise consistent with EPA’s anti-backsliding rules; for additional information see EPA’s NPDES Permit Writers’ Manual (EPA-833-96-003), which is available at: http://cfpub.epa.gov/npdes/pubs.cfm?program_id=0.

In conclusion, the draft permit’s approach for incorporating WLAs as numeric limits is appropriate, and we strongly recommend against making any revisions to the draft permit that would make the TMDL provisions inconsistent with this Board’s Orange County MS4 permit.

We also have the following additional comments related to the specific TMDL requirements in the draft permit.

(1) MSAR Bacteria TMDL

Page 56 (Section VI.C.1.d.ii) – We recommend the permit specifically require that the revisions to the DAMP to address the bacteria WLA be submitted to the Executive Officer (EO) for approval. We note that Finding A.6 for the permit also commits to providing the public an opportunity to review and comment on all documents submitted to the Board in accordance with the permit. These revisions to the DAMP are an important item and should be submitted to the EO for approval and be subject to public review.

Page 56 (Section VI.C.1.d.iv) – We recommend the permit language be strengthened to ensure steady progress during the term of the permit in complying with the WLAs. We suggest language such as the following be added at the end of Section VI.C.1.d.iv.(b):

"Each permittee shall quantify the BMP effectiveness of BMPs already implemented and newly recommended BMPs to reduce pollutant loads. The permittee shall also recommend a target date in which new BMPs will be implemented."

We also suggest that Section VI.C.1.d.iv provide that the EO may require revisions to the DAMP, LIP or WQMP if reasonable progress is not being demonstrated in the annual reports toward compliance with the WLAs by the 2015 deadline.

Page 57 (Section VI.C.1.d.iii) – The permit would allow compliance with the WLAs to be measured at locations specified in the MSAR TMDL or "other appropriate urban source monitoring locations." We note that specific compliance points were approved by the SARB on April 18, 2008 in Resolution No. R8-2008-0044, which approved the MSAR monitoring plan. At a minimum, if alternate compliance points are to be used, they should be submitted to the EO for approval, with opportunity for public review and comment provided as well. The SARB's expectations regarding the number of other appropriate locations should also be provided in the permit.

(2) Lake Elsinore/Canyon Lake Nutrient TMDLs

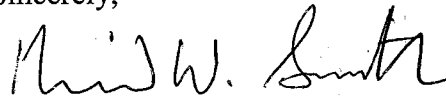
Page 58 (Section VI.C.2.a) – We recommend the permit be revised to clarify that compliance with the numeric WLAs and implementation of the various tasks in the implementation plan are separate and independent obligations of the permit. Currently, the language suggests that compliance with the tasks in the implementation plan may satisfy the requirement to comply with the numeric WLAs, even if the various tasks do not result in actual compliance with the numeric WLAs. This revision would provide greater assurance of consistency with the WLAs and would enhance the enforceability of the permit with regards to the WLAs. Furthermore, to improve the distinction between meeting the WLAs and the implementation tasks outlined in the TMDL, the interim

milestones and tasks outlined in the implementation plan should be incorporated into the permit to ensure the achievement of the final WLAs.

Page 61 (Section VI.C.2.f.i) – We recommend clarification regarding the number of “representative” monitoring locations which would be required. The permit should provide expectations for the magnitude of the required monitoring pursuant to this section. At a minimum, the permit should also ensure consistency with the monitoring requirements of the TMDL implementation plan, including the minimum sampling frequency and locations specified.

We appreciate the opportunity to provide input on this draft permit. If you would like to discuss these comments, please contact John Tinger at (415) 972-3518, or Eugene Bromley at 415-972-3510.

Sincerely,

A handwritten signature in dark ink, appearing to read "David W. Smith". The signature is fluid and cursive, with the first name "David" and last name "Smith" being clearly legible.

David W. Smith, Chief
NPDES Permits Office